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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1966

No. 1003

RICHARD E. LOCKE,
Petitioner,

vs.

RIVER LINES INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI
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Petitioner Richard E. Locke prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on November 10, 1965.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 352 Fed. 2d No. 2, page 307, and is reprinted in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeal was entered November 10, 1965. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1. Whether respondent as owner and operator of a tug with a barge in tow, in mooring said barge to a river bank cluster of trees, is liable under the doctrine of negligence or unseaworthiness, when the contact of the barge with a river bank caused a rotten or defective tree trunk in said cluster of trees, to break and fall upon a seaman on said barge while preparing to secure a mooring line to a tree in said cluster.

2. Whether the use of a rotten or defective (unseaworthy) tree by a vessel as a mooring device constitutes an unseaworthy appurtenance of the vessel and makes said vessel unseaworthy and liable for injuries suffered by a seaman aboard said vessel when said tree trunk breaks and falls upon said seaman.

3. Whether respondent is negligent when the Captain of its tug orders a seaman to place himself in an unsafe place to work (on the deck of the barge under a mooring tree) having knowledge that a tree or its branches or trunk might break and fall upon said seaman.

STATUTES INVOLVED

This action was brought under Section 33 of the Merchant Seaman's Act of June 5, 1928, and all amendments thereto and under the general maritime law.

STATEMENT OF THE CASE

A. The Case Below.

The jurisdiction of the District Court was invoked by reason of Section 33 of the Merchant Seaman's Act of June 5, 1920 and all amendments thereto and all other applicable and maritime tort law in the premises.

The District Court found that libelant was not guilty of contributory negligence but placed its decision in favor of respondent upon the ground that libelant's injury was solely, although unfortunately, caused by an accident to which no negligence of the shipowner nor any unseaworthiness of the ship contributed.

The Ninth Circuit affirmed the judgment below on the basis that no issues were raised on appeal other than those presented to the District Court, save the contention that in certain of its findings the District Cour was clearly erroneous.

B. The Facts.

The facts in this case may be summarized as follows: On June 22, 1961, petitioner was employed as a deckhand aboard the tug YUBA owned by respondent

and said tug had in tow an empty rock barge and said vessels were proceeding down the Sacramento River with their destination being River Lines dock, Sacramento, California. About 20 miles up river from Sacramento, the river widens out at the point where Sacramento Slough joins the Sacramento River. At this point the Captain decided to moor the rock barge to a cluster of trees on the river bank. (R. 55.)

The crew of said tug and barge consisted of the Captain, a second operator and petitioner as deckhand. (R. 45.)

The tug had the barge in tow by means of a seventy foot manila line at the end of which a wire bridle proceeded in a "V" to the starboard and port bow of the barge for a total of almost one hundred feet of line between the stern of the tug and the bow of the barge. (R. 142.)

Petitioner upon receiving the order from the Captain that they were going to tie the barge up to the river bank tree in a jacknife maneuver, proceeded to the tow bit of the tug, stood by the tow line, slacked it off a little bit so as to make enough room for the jacknife operation, took up the slack, secured same and upon the tug making its one hundred and eighty degree turn and placing its bow alongside the starboard bow of the barge, petitioner in accordance with his required duties, proceeded onto the barge and to the port stern where he started taking the line loose from the bit preparatory to using said line to secure the port stern of the barge to the river bank trees. Just as he got the line free, petitioner heard

the barge hit the bank and the tree, and upon hearing branches falling, tried to duck out of the way, at which time he was struck and knocked unconscious by a falling tree trunk. (R. 55 through 59.)

The trial judge in his memorandum of decision states: "It appears inferentially that the branch fell as the result of the movement of the barge against the bank—although there is no substantial evidence that the contact was unusual". (Memorandum of Decision, page 1, lines 22 to 25.) In addition, the trial judge stated "Well, I am assuming that, but the tree fell down and I think that it fell from some kind of activity of the barge on the shore. Otherwise the thing would have been too coincidental." (R.T. page 237, lines 6 through 9.)

It was also stated by counsel for respondent: "Yes, I would assume that the barge would come in contact with the trees, and those things are on spongy ground, and they wobble and it came down." (R.T. 237, lines 1 through 12.)

One of the findings of the trial court was "it is not uncommon that a limb may be jarred loose and fall from a tree in this process. (Tying barges up to trees along the banks of the river.) This is well known to the crews of tugs who work in the river." (Findings of Fact No. 9; R. 146.)

There was no dispute that the part of the tree that fell upon petitioner was decayed. (R. 146.)

REASONS FOR GRANTING THE WRIT

A. IMPORTANCE OF THE QUESTION.

Whether a shipowner is required to warrant the seaworthiness of a mooring place or structure which it has exclusively chosen is a question of major importance to a seaman under the laws and decisions relating to the Jones Act.

Whether the failure of the Captain of a vessel to provided a deckhand with a reasonably safe place in which to work, said Captain having before hand full knowledge that under the circumstances said place was unsafe, is negligence under the Jones Act, is of major importance to all seamen.

B. CONFLICT WITH PRIOR DECISIONS.

It is settled law that a shipowner is under an absolute and non-delegable duty to provide a seaman with a reasonably safe place in which to work and its failure to do so constitutes negligence. The shipowner is liable for an unseaworthy condition, gear or appurtenance, whether it be on the ship or on shore if said appurtenance is being used as ship's gear. In such event, the shipowner is liable regardless of notice and regardless of the fact that the dangerous condition was created by another.

Matson Navigation Co. v. Huff, 388 Fed. 2d 205;

Rich v. Ellerman & Bucknall Steamship Co., 278 Fed. 2d 704;

Beard v. Ellerman Lines, Ltd., 289 Fed. 2d 201;
Olsen Towboat Co. v. Dutra, 300 Fed. 2d 883;
Guiterrez v. Waterman Steamship Corp., 373 U. S. 206;
Thompson v. Calmar Steamship Corp., 331 Fed. 2d 657.

SUMMARY

It is respectfully submitted that the decision of the trial court and the Ninth Circuit in this case should be reversed. The warranty of seaworthiness should include a defective or rotten tree when the same is being used by the shipowner as a mooring device for his ship. It was the absolute and non-delegable duty of respondent shipowner to provide petitioner with a reasonably safe place in which to work. Respondent in this case had full knowledge that in this type of mooring operation trees were caused to break and fall. In a wanton and careless disregard of this knowledge, petitioner was directed by the shipowner to work in a place where such a falling trunk or limb could, and in fact did, fall upon him. The trial court found no contributory negligence on petitioner's part, found that a branch did fall upon plaintiff and found inferentially that the branch fell as the result of the movement of the barge against the bank, but held for respondent on the basis that the injury was solely, although unfortunately, caused by an accident to which no negligence of the shipowner nor any unseaworthiness of the ship contributed. The erroneous

basis of the court's decision for this finding was that the tree was not part of any gear or device being used by the tug barge unit in its operations. (Memorandum of Decision, page 3.) It is clear that such was not the case but in fact that said tree was being used as a mooring device or anchor equivalent. The conclusion of the trial court completely ignores the basic concept of maritime law which imposes a strict duty on the part of the shipowner to protect its crew members from injury.

CONCLUSION

For these reasons it is respectfully submitted that the petition for Writ of Certiorari should be granted.

January 31, 1966.

EDWARD R. KAY,
Attorney for Petitioner
Richard E. Locke.

FRANCIS J. SOLVIN,
Of Counsel.

(Appendix Follows)

Appendix

United States Court of Appeals
For the Ninth Circuit

Richard E. Locke, Appellant, vs. River Lines, Inc., Appellee.	No. 19,838

[November 10, 1965]

On Appeal from the United States District Court
for the Northern District of California,
Southern Division

Before: MERRILL, KOELSCH and BROWNING, Circuit Judges

Per Curiam:

No issues are raised on appeal other than those presented to the District Court save the contention that in certain of its findings the District Court was clearly erroneous.

In our judgment the findings in question were not clearly erroneous. Upon the remaining issues we agree with the District Court for the reasons set forth in its opinion.

Judgment affirmed.

United States Court of Appeals
For the Ninth Circuit

Richard E. Locke, Appellant, vs. River Lines, Inc., Appellee.	No. 19,838

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered November 10, 1965